

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

**BRANDEN ROBERTS,**

**Plaintiff,**

**v.**

**No. CV 14-069 KG/LAM**

**D. MARTINEZ and K. RAMOS,**

**Defendants.**

**ORDER ADOPTING PROPOSED FINDINGS**  
**AND RECOMMENDED DISPOSITION**

**THIS MATTER** is before the Court on Magistrate Judge Lourdes A. Martínez' *Proposed Findings and Recommended Disposition* (*Doc. 19*), filed on October 6, 2014. On October 15, 2014, Plaintiff filed a notification with the Court regarding information concerning his arrest, and asking the Court to strike Defendant Ramos as a Defendant in this case. [*Doc. 21*]. No objections to the PF&RD have been filed, and the time for doing so has passed. Having reviewed the PF&RD, the notification filed by Plaintiff, and the record of this case, the Court has determined that it will: (1) adopt the *Proposed Findings and Recommended Disposition* (*Doc. 19*); (2) deny without prejudice Defendant Martinez' motion to dismiss [*Doc. 12*] and Plaintiff's motion to submit a picture into evidence [*Doc. 11*]; (3) grant Plaintiff's request for a jury trial and deny without prejudice his request for discovery [*Doc. 14*]; and (4) dismiss Defendant Ramos from this case.


As explained in the PF&RD, Plaintiff brings a claim for excessive force and seeks damages based on allegations that, during his arrest by Albuquerque police officers, an unidentified officer kicked Plaintiff in the head while Plaintiff was handcuffed and on his stomach. [*Doc. 19* at 2]

(citing *Doc. 1* at 2, 3 and 5). The Magistrate Judge explained in the PF&RD that, even though Plaintiff has made sufficient allegations to proceed on his claim of excessive force, the Court is unable to determine whether Defendant Martinez is entitled to qualified immunity because it is not clear from Plaintiff's Complaint for which crime Plaintiff was arrested, whether Plaintiff posed immediate threat to the safety of the officers or others, or whether he was actively resisting arrest or attempting to flee. *See [Doc. 19]* at 4-5]. The Magistrate Judge recommended that Plaintiff be ordered to file a notice with the Court stating the date and year of his arrest and the crime for which he was arrested, and stating whether he wishes to pursue his claim against Defendant Ramos. *Id.* at 7-8. In his notification to the Court, Plaintiff states that he was arrested on April 5, 2013 for Conspiracy and Tampering with Evidence, and Plaintiff asks the Court to strike Defendant Ramos from the Complaint, and states that he does not wish to pursue his claim against Defendant Ramos. *[Doc. 21]*. Based on Plaintiff's notification, the Court finds that Plaintiff has complied with the Magistrate Judge's recommendation for notification, and the Court will dismiss Defendant Ramos from this case.

**IT IS THEREFORE ORDERED** that:

1. The *Proposed Findings and Recommended Disposition* (*Doc. 19*) are **ADOPTED**.
2. Defendant Martinez' motion to dismiss *[Doc. 12]* and Plaintiff's motion to submit a picture into evidence *[Doc. 11]* are **DENIED without prejudice**.
3. Plaintiff's motion for discovery and for a jury trial is **GRANTED** as to the request for a jury trial and **DENIED without prejudice** as to the request for discovery.
4. Defendant Ramos is hereby **DISMISSED** from this case.

**IT IS SO ORDERED.**



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UNITED STATES DISTRICT JUDGE